

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

BENNIE CHARLES BROWN

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CRIMINAL NO. 6:09-CR-103-1

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On September 16, 2011, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Bennie Charles Brown. The government was represented by Alan Jackson, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by court-appointed federal defender Wayne Dickey.

Defendant originally pled guilty to the offense of conspiracy to defraud the government with respect to claims, a Class C felony. The offense carried a statutory maximum imprisonment term of 10 years. The United States Sentencing Guideline range, based on a total offense level of 23 and a criminal history category of IV, was 70 to 87 months. On June 9, 2009, District Judge Michael Schneider sentenced Defendant to time served and 3 years supervised release subject to the standard conditions of release, plus special conditions to include substance abuse treatment and an obligation to pay restitution in the amount of \$1,326,908. On June 9, 2009, Defendant completed the term of imprisonment and began his term of supervised release.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from committing another federal, state, or local crime. Defendant was further required to refrain from any unlawful use of a controlled substance, work regularly at a lawful occupation, and pay any

financial penalty imposed by his judgment. In its petition, the government alleges that Defendant violated his term of supervised release by filing a fraudulent tax return in violation of 18 U.S.C. § 287; testing positive for cocaine; failing to maintain regular lawful employment; and failing to make restitution payments. Fifth Circuit law permits a court to find that illicit drug use constitutes possession.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing cocaine,¹ Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). The Court shall then revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. 7B1.4(a).

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by testing positive for the use of cocaine, failing to maintain employment for a period of 12 months, or failing to make Court ordered restitution payments, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). The Court may then revoke supervised release or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade C violation is 6 to 12 months. U.S.S.G. 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the government's petition. In exchange, the government agreed to recommend that Defendant serve 15 months imprisonment with no supervised release to follow.

¹ Such an offense would also be a violation of Texas Health and Safety Code § 481.115.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Bennie Charles Brown be committed to the custody of the Bureau of Prisons for a term of imprisonment of 15 months, with no supervised release to follow. It is further **RECOMMENDED** that the place of confinement be FCI Seagoville, Texas.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael Schneider for adoption immediately upon issuance.

So ORDERED and SIGNED this 19th day of September, 2011.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE